IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARY LEE DORSEY	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:15-cv-06733
	)	
CITIFINANCIAL, INC.	)	Hon. Judge Marvin E. Aspen
	)	Hon. Mag. Judge Daniel G. Martin
Defendants.	)	
	)	

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendant CitiFinancial Servicing, LLC[1] ("Defendant") hereby submits its answer and affirmative defenses to Plaintiff Mary Lee Dorsey's Complaint in this matter. No answer is required with respect to the headings, prayers for relief, and other content of the Complaint that do not set forth allegations of fact and are not included within numbered paragraphs. Any such materials, as well as the allegations of the Complaint, are repeated herein solely for ease of reference.

NATURE OF THE ACTION

1. Plaintiff brings this action for violations of the Telephone Consumer Protection Act ("TCPA") pursuant to 47 U.S.C. §227, violations of the Bankruptcy Discharge Injunction pursuant to 11 U.S.C. §524, and violations of the Illinois Consumer Fraud and Deceptive Practices Act ("ICFA") pursuant to 815 ILCS 505/1 et seq.

RESPONSE: This paragraph purports to characterize Plaintiff's claims set forth in the Complaint, and Defendant states that the Complaint speaks for itself and denies any allegations or characterizations contrary thereto. Defendant denies that it has violated the Telephone

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1 The Complaint improperly names CitiFinancial, Inc. as a defendant.

Consumer Protection Act of 1991, 47 U.S.C. § 227 *et seq.* ("TCPA"), denies that it has violated any Bankruptcy Discharge Injunction issued pursuant to 11 U.S.C. §524, denies that it has violated the Illinois Consumer Fraud and Deceptive Practices Act ("ICFA"), and denies any and all allegations of wrongdoing. Defendant denies any remaining allegations in this paragraph.

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 47 U.S.C. §227 ("TCPA"), and 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States.

RESPONSE: The allegations of this paragraph state a legal conclusion, to which no response is required.

3. The Court has supplemental jurisdiction over the state law ICFA claim under 28 U.S.C. §1367.

RESPONSE: The allegations of this paragraph state a legal conclusion, to which no response is required.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Citi conducts business in the Northern District of Illinois and all of the events or omissions giving rise to the claims occurred within the Northern District of Illinois.

RESPONSE: The allegations of this paragraph state a legal conclusion, to which no response is required.

PARTIES

5. Plaintiff is a consumer and natural person over 18-years-of-age who at all times relevant owned the property located at 4 Penny Court Bolingbrook, Illinois 60440 ("subject property").

RESPONSE: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and, accordingly, denies them.

6. Citi is a Delaware corporation with its principal place of business in Baltimore, Maryland. Citi is a foreign company and a creditor, lender, debt collector, furnisher of credit information, and servicer of mortgage loans across the country, qualified to do business in the State of Illinois.

RESPONSE: Defendant is a Delaware corporation whose principal place of business is located in Missouri; accordingly, Defendant denies the first sentence of Paragraph 6. Defendant admits that it is registered to conduct business and does conduct certain business in Illinois. To the extent the remaining allegations in Paragraph 6 are intended to be factual, Defendant denies the allegations.

BANKRUPTCY CASE

7. On February 26, 2008 Plaintiff executed a mortgage loan in the amount of $321,750.00 ("subject loan" or "subject debt") in favor of Citi and secured by the subject property.

RESPONSE: Defendant admits that on or around February 26, 2008, Plaintiff purports to have executed a mortgage instrument in which CitiFinancial Services, Inc. is identified as the mortgagee. That document speaks for itself, and, accordingly, Defendant denies any and all characterizations or allegations of the same that are contrary thereto. Defendant denies any remaining allegations in Paragraph 7.

8. On June 26, 2012, Plaintiff filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court, Northern District of Illinois, Case Number 12-25545 ("bankruptcy").

RESPONSE: Defendant admits that the docket for the United States Bankruptcy Court for the Northern District of Illinois shows a filing by Plaintiff of a Chapter 13 bankruptcy petition in a case numbered 12-25545 on or about June 26, 2012. Defendant denies any remaining allegations in Paragraph 8.

9. Schedule D of the bankruptcy petition listed the subject loan, a secured pre-petition debt to Citi, in the amount of $307,016.00, secured by the subject property. *See* Exhibit A, a true and correct copy of Schedule D filed in Plaintiff's bankruptcy case.

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant states that Plaintiff's Chapter 13 plan filed with the United States Bankruptcy Court for the Northern District of Illinois, including Schedule D thereto, speaks for itself and Defendant denies any characterizations of that plan that are contrary thereto. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 9 concerning whether Exhibit A attached to the Complaint is a true and correct copy of Schedule D and, accordingly, denies them. Defendant denies any remaining allegations in Paragraph 9.

10. Also on June 26, 2012, Plaintiff filed her original Chapter 13 plan ("Original Plan"). *See* Exhibit B, a true and correct copy of Plaintiff's Original Plan.

RESPONSE: Defendant admits that the docket for the United States Bankruptcy Court for the Northern District of Illinois shows a filing by Plaintiff of a Chapter 13 plan in a case numbered 12-25545 on or about June 26, 2012. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 10 concerning whether Exhibit B attached to the Complaint is a true and correct copy of Plaintiff's Original Plan and, accordingly, denies them. Defendant denies any remaining allegations in Paragraph 10.

11. Plaintiff's Original Plan proposed to treat Citi's claim as follows:

> "Debtor is surrendering the real property located at 4 Penny Court, Bolingbrook, Illinois to CitiFinancial, Inc., in full satisfaction of its claims." *Id.* at p. 5.

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant states that Plaintiff's Chapter 13 plan filed with the United States Bankruptcy Court for the Northern District of Illinois speaks for itself and Defendant denies any characterizations of that plan that are contrary thereto. Defendant denies any remaining allegations in Paragraph 11.

12. On June 29, 2012, by virtue of listing Citi as a creditor, the Bankruptcy Noticing Center ("BNC") served Citi with a notice of Plaintiff's bankruptcy filing and Plaintiff's Original Plan. *See* Exhibit C, a true and correct copy of the BNC Certificate of Notice establishing service of the notice of filing and Original Plan upon Citi.

RESPONSE: The first sentence of this paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required for any portion of the first sentence of this paragraph, Defendant states that the docket for the United States Bankruptcy Court for the Northern District of Illinois shows that certificate of notice was filed in a case numbered 12-25545 on June 27, 2012; accordingly, Defendant denies the first sentence of Paragraph 12. Answering further, Defendant states that the certificate of notice filed with the United States Bankruptcy Court for the Northern District of Illinois speaks for itself and denies any characterizations of that document that are contrary thereto. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 12 concerning whether Exhibit C to the Complaint is a true and correct copy of the BNC Certificate of Notice and, accordingly, denies them. Defendant denies any remaining allegations in Paragraph 12.

13. Citi did not file any objection to Plaintiff's Chapter 13 Original Plan.

RESPONSE: Defendant states that the docket for the United States Bankruptcy Court for the Northern District of Illinois does not reflect any objection by Defendant to Plaintiff's Chapter 13 plan filed in case numbered 12-25545. Defendant denies any remaining allegations in Paragraph 13.

14. On July 25, 2012, the 341 Meeting of Creditors was held with the Chapter 13 Trustee. No representative of Citi appeared at the 341 Meeting of Creditors.

RESPONSE. Defendant admits that, pursuant to the docket in a case numbered 12-25545, a Meeting of Creditors was ordered to occur on July 25, 2015. Further answering, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 14 and, accordingly, denies them.

15. On September 5, 2012, the Original Plan was confirmed by the Honorable Bruce W. Black. *See* Exhibit D, a true and correct copy of the Confirmation Order.

RESPONSE: The first sentence of this paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant states that the docket for case number 12-25545 in the United States Bankruptcy Court for the Northern District of Illinois shows that, on or around September 5, 2012, the court entered an order confirming a Chapter 13 plan. Answering further, Defendant states that that order entered by Judge Bruce W. Black speaks for itself, and Defendant denies any characterizations of that order that are contrary thereto. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 15 and, accordingly, denies them.

16. Plaintiff fully performed her duties as set forth in her confirmed Chapter 13 Plan.

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 16 and, accordingly, denies them.

17. On January 28, 2015, the Bankruptcy Court entered an Order of Discharge in Plaintiff's case of all dischargeable debts, including the subject loan. *See* Exhibit E, a true and correct copy of the Order of Discharge and BNC Certificate of Notice establishing service of the Order of Discharge upon Citi.

RESPONSE: The first sentence of this paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant states that the docket for case number 12-25545 in the United States Bankruptcy Court for the Northern District of Illinois shows that, on or around January 28, 2015, the court entered a discharge order. Answering further, Defendant states that that order entered by the United States Bankruptcy Court for the Northern District of Illinois speaks for itself, and Defendant denies any characterizations of that order that are contrary thereto. Defendant further answers that the BNC Certificate of Notice referenced in this paragraph speaks for itself, and Defendant denies any characterizations of that order that are contrary thereto. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 17 concerning whether Exhibit E to the Complaint is a true and correct copy of the Order of Discharge and BNC Certificate of Notice and, accordingly, denies them. Defendant denies any remaining allegations in Paragraph 17.

18. The Order of Discharge expressly states:

> "The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor...." *Id.* at p. 2.

RESPONSE: Defendant states that the docket for case number 12-25545 in the United States Bankruptcy Court for the Northern District of Illinois shows that, on or around January 28, 2015, the bankruptcy court entered a discharge order. Answering further, Defendant states that that discharge order entered by the United States Bankruptcy Court for the Northern District of Illinois speaks for itself, and Defendant denies any characterizations of that order that are contrary thereto. Defendant denies any remaining allegations of Paragraph 18.

19. On January 30, 2015 the BNC served Citi with the Order of Discharge. *Id.* at p. 3.

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant states that the docket for case number 12-25545 in the United States Bankruptcy Court for the Northern District of Illinois shows that on or around January 30, 2015, a Discharge of Debtor After Completion of Chapter 13 Plan was entered by the bankruptcy court. That document speaks for itself, and Defendant denies any characterizations of that order that are contrary thereto. Defendant denies any remaining allegations in Paragraph 19.

20. Pursuant to 11 U.S.C. §524, the Order of Discharge invoked the protections of the discharge injunction prohibiting any acts to collect upon the subject debt by Citi or any other party.

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 20.

21. On February 24, 2015, Plaintiff's bankruptcy case closed.

RESPONSE: Defendant states that the docket for case number 12-25545 in the United States Bankruptcy Court for the Northern District of Illinois contains an entry on or around February 24, 2015 stating "Bankruptcy Case Closed and Trustee Discharged." That document speaks for itself, and Defendant denies any characterizations of that order that are contrary thereto. Defendant denies any remaining allegations in Paragraph 21.

22. Plaintiff's personal liability on the subject loan was extinguished via her bankruptcy discharge, thus terminating the business relationship with Citi and any of its successors and assigns.

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 22.

CITI'S POST-DISCHARGE COMMUNICATIONS

23. After the discharge injunction had taken effect, Citi sought to collect the subject debt from the Plaintiff personally.

RESPONSE: As to the text contained in Paragraph 23, Defendant denies the allegations and further denies any and all allegations of wrongdoing. As to the footnote referenced in Paragraph 23, it references Plaintiff's Chapter 13 plan filed with the United States Bankruptcy Court for the Northern District of Illinois, which speaks for itself as to its contents, and Defendant denies any characterizations of that plan that are contrary thereto. Defendant denies any remaining allegations in Paragraph 23.

24. At all times relevant, Plaintiff was the sole subscriber, owner, possessor, and operator of a cellular telephone with the assigned number ending in 7741. Plaintiff is and has always *been*

financially responsible for this cellular phone and its services.

RESPONSE: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 and, accordingly, denies them.

25. On or about March 16, 2015, Citi sent the Plaintiff a dunning letter stating that: "As of 05/04/2012, you are late on your mortgage payments. Failure to bring your loan current could result in foreclosure and the eventual sale of your home to satisfy the debt. Total Amount Due: $79,164.00. You must pay this amount to bring your loan current." The letter and statement included an attached payment coupon. *See* Exhibit F, a true copy of Citi's March 16, 2015 dunning letter and statement.

RESPONSE: The first sentence of this paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, and as to the remaining allegations in this paragraph, Defendant states that on or around March 16, 2015, it caused certain written communications to be sent to Plaintiff. These materials speak for themselves, and Defendant denies any characterizations that are contrary to thereto. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 25 concerning whether Exhibit F to the Complaint is a true copy of Citi's March 16, 2015 letter and, accordingly, denies them. Defendant denies any remaining allegations in Paragraph 25.

26. Moreover, the March 16, 2015 dunning letter also implicitly threatened to report the delinquency to the credit bureaus by stating in large bold letters **"Protect Your Credit...."** and further stated "[a] good credit rating can make a real difference in your life, helping you to get something when you want it, or more importantly when you need it." "To maintain good credit....make your payments on time." *Id.*

RESPONSE: The first sentence of this paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, and as to the remaining sentences of this paragraph, Defendant states that, on or around March 16, 2015, it caused certain written communications to be sent to Plaintiff. These materials speak for themselves, and Defendant denies any characterizations that are contrary to thereto. Defendant denies the remaining allegations of Paragraph 26.

27. On May 11, 2015, Citi sent the Plaintiff an unsolicited letter stating that "...we have referred your mortgage loan to foreclosure counsel to begin foreclosure proceedings." *See* Exhibit G, a true and correct copy of Citi's May 11, 2015 correspondence.

RESPONSE: Defendant states that on or around May 11, 2015, it caused certain written communications to be sent to Plaintiff. These materials speak for themselves, and Defendant denies any characterizations of those communications that are contrary to thereto. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 27 concerning whether Exhibit G to the Complaint is a true and correct copy of the May 11, 2015 letter and, accordingly, denies them. Defendant denies any remaining allegations in Paragraph 27.

28. Citi also attempted to collect the discharged debt through phone calls to Plaintiff. Between May 15 through May 29, 2015, Plaintiff received at least 18 phone calls to her cell phone from Citi regarding the subject debt and requested an immediate call back regarding the subject debt.

RESPONSE: The first sentence of this paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant denies the allegations of the first sentence of Paragraph 28. As to the second sentence of this paragraph, Defendant denies the allegations and further denies any and all allegations of wrongdoing.

29. On or about May 19, 2015, Plaintiff received a dunning letter from Citi stating that: "As of 05/04/2012, you are late on your mortgage payments. As a result of your delinquency, your loan account has been placed in foreclosure status and you may also incur fees and expenses on your loan account. Total: $372,992.75 Due. Your loan has been accelerated. The accelerated amount is due now." The dunning letter and statement included an attached payment coupon. *See* Exhibit H, a true copy of Citi's May 19, 2015 dunning letter.

RESPONSE: The first and sixth sentences of this paragraph state purported legal conclusions, to which no response is required. To the extent a response is required to these sentences, and as to the remaining sentences of this paragraph, Defendant states that on or around May 19, 2015 it caused certain written communications to be sent to Plaintiff; these materials speak for themselves, and Defendant denies any characterizations that are contrary to thereto. As for the remaining allegations in this paragraph, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 29 concerning whether Exhibit H to the Complaint is a true copy of the May 19, 2015 letter and, accordingly, denies them. Defendant denies any remaining allegations of Paragraph 29.

30. In June of 2015, Plaintiff received at least 72 phone calls to her cell phone from Citi in an attempt to collect the subject debt, requesting an immediate call back regarding the subject debt.

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 30 and further denies any and all allegations of wrongdoing.

31. On or about June 22, 2015, Plaintiff received a dunning letter from Citi stating that: "As of 05/04/2012, you are late on your mortgage payments. As a result of your delinquency, your loan account has been placed in foreclosure status and you may also incur fees and expenses on your loan account." The dunning letter also included an attached payment coupon that stated "Total Payment Due: $403,912.43." *See* Exhibit I, a true copy of Citi's June 22, 2015 dunning letter.

RESPONSE: The first and third sentences of this paragraph state purported legal conclusions, to which no response is required. To the extent a response is required to these sentences, and as to the remaining sentences of this paragraph, Defendant states that on or around June 22, 2015 it caused certain written communications to be sent to Plaintiff; these materials speak for themselves and Defendant denies any characterizations that are contrary to thereto. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 31 concerning whether Exhibit I is a true copy of the June 22, 2015 letter and, accordingly, denies them. Defendant denies any remaining allegations in Paragraph 31.

32. Citi continued to seek collection of the discharged subject debt through more phone calls to Plaintiff in July of 2015. Between July 2 and July 09, Plaintiff received at least 11 more

phone calls to her cell phone from Citi regarding the subject debt, requesting an immediate call back.

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 32 and further denies any and all allegations of wrongdoing.

33. Citi's phone harassment campaign and illegal collection have caused Plaintiff actual harm, including but not limited to, invasion of privacy, aggravation that accompanies unsolicited telephone calls, emotional distress, mental anguish from believing her bankruptcy had no legal effect, increased usage of her telephone services, decreased battery life on her cellular phone, and diminished space for data storage on her cellular phone.

RESPONSE: Defendant denies the allegations of Paragraph 33 and further denies any and all allegations of wrongdoing.

34. Moreover, Plaintiff was forced to expend time and expenses by retaining counsel as a result of Citi's conduct.

RESPONSE: Defendant denies the allegations in Paragraph 34 that Defendant's conduct caused any harm to Plaintiff. Further answering, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 34 concerning why she retained counsel in this action and, accordingly, denies them and further denies any and all allegations of wrongdoing. Defendant denies any remaining allegations in Paragraph 34.

COUNT I — VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT

35. Plaintiff restates and realleges paragraphs 1 through 34 as though fully set forth herein.

RESPONSE: Defendant incorporates its responses to Paragraphs 1 through 34 of Plaintiff's Complaint as if fully stated herein.

36. The TCPA prohibits calling persons on their cell phone using an automatic telephone dialing system ("ATDS"). 47 U.S.C. §227(b)(1)(iii). The TCPA defines ATDS as "equipment which has the capacity...to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers." 47 U.S.C. §227(a)(1).

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant states that the TCPA speaks for itself, and Defendant denies any characterizations of the TCPA contrary thereto. Defendant denies any remaining allegations in this paragraph, and further denies any and all allegations of wrongdoing.

37. Upon information and belief, Citi used a predictive dialing system to place calls to Plaintiff.

RESPONSE: Paragraph 37 states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 37 and further denies any and all allegations of wrongdoing.

38. "A predictive dialer is equipment that dials numbers and, when certain computer software is attached, also assists [caller] in predicting when an [agent] will be available to take calls. The hardware, when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers." *Meyer v. Portfolio Recovety Associates, LLC*, 707 F.3d 1036, 1043 (9th Cir. 2012).

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant states that the 9th Circuit decision referred to in this paragraph speaks for itself, and Defendant denies any characterizations of that decision that are contrary thereto. Defendant denies any remaining allegations in Paragraph 38.

39. The Federal Communications Commission ("FCC") has determined that predictive dialing systems are a form of an automatic telephone dialing system. *Id*

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant states that the 9th Circuit decision referred to in Paragraph 38, and cited in this paragraph, speaks for itself, and Defendant denies any characterizations of that decision that are contrary thereto. Defendant denies any remaining allegations in Paragraph 39.

40. Citi violated the TCPA by placing no less than 101 calls to Plaintiff's cellular phone

using an ATDS without her consent. Any prior consent was revoked by virtue of Plaintiff's bankruptcy filing, and Plaintiff's verbal revocation.

RESPONSE: Defendant denies the allegations of Paragraph 40 and further denies any and all allegations of wrongdoing.

41. Plaintiff's surrender of the subject property, her confirmed plan, and discharge demonstrate that Citi had no legitimate business purpose for its calls to Plaintiff's cellular phone.

RESPONSE: Defendant denies the allegations of Paragraph 41 and further denies any and all allegations of wrongdoing.

42. As pled in paragraphs 34-35, Plaintiff was harmed by Citi's collection calls to her cellular phone.

RESPONSE: Defendant incorporates its responses to Paragraphs 34 and 35 of Plaintiff's Complaint as if fully stated herein. Answering further, Defendant denies the allegations of Paragraph 42, denies that Plaintiff was harmed by Defendant, and further denies any and all allegations of wrongdoing.

43. Pursuant to 47 U.S.C. §227(b)(3)(B), Citi is liable to Plaintiff for a minimum of $500 per call. Moreover, pursuant to 47 U.S.C. §227(b)(3)(C), Citi's willful and knowing violations of the TCPA should trigger this Honorable Court's ability to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. §227(b)(3)(C).

RESPONSE: Defendant denies the allegations of Paragraph 43, denies that Defendant is liable to Plaintiff for any damages, and further denies any and all allegations of wrongdoing.

COUNT II- VIOLATION OF THE DISCHARGE INJUNCTION

44. Plaintiff restates and realleges paragraphs 1 through 34 as though fully set forth herein.

RESPONSE: Defendant incorporates its responses to Paragraphs 1 through 34 of Plaintiff's Complaint as if fully stated herein.

a. Section 11 U.S.C. §524(a)(2)

45. Pursuant to 11 U.S.C. §524(a)(2), a discharge order "operates as an injunction" against acts to collect discharged debts.

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant states that 11 U.S.C. §524(a)(2) speaks for itself and denies any characterizations that are contrary thereto. Defendant denies any remaining allegations in this paragraph and further denies any and all allegations of wrongdoing.

46. "Section 524(a)(2) enjoins an act to collect a discharged debt, so a creditor that attempts to collect a discharged debt is in contempt of the bankruptcy court that issued the order of discharge." *Cox* v. *Zale Delaware, Inc.,* 239 F.3d 910, 915 (7th Cir. 2001).

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant states that the 7th Circuit decision referred to this paragraph speaks for itself, and Defendant denies any characterizations of that decision that are contrary thereto. Defendant denies any remaining allegations of Paragraph 46.

47. Punitive damages may be awarded for violations of the bankruptcy discharge, and are especially appropriate when a party acts in "clear disregard and disrespect of the bankruptcy laws." *In re Vazquez, 221* B.R. 222, 231 (Bankr.N.D.I11.1998). Punitive damages of four to ten times the amount of compensatory damages may be appropriate for willful violations of the bankruptcy injunction. *Id.*

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant states that this Court's decision referred to this paragraph speaks for itself, and Defendant denies any characterizations of that decision that are contrary thereto. Defendant denies any remaining allegations of Paragraph 47 and further denies any implication that punitive damages are warranted in this case.

48. Notwithstanding having actual notice of Plaintiff's discharge, Citi continued to call and send the Plaintiff dunning letters in an attempt to coerce payment on a debt that Plaintiff had no obligation to pay pursuant to her bankruptcy discharge.

RESPONSE: Defendant denies the allegations of Paragraph 48 and further denies any and all allegations of wrongdoing.

49. Citi's dunning letters to Plaintiff demanding immediate payments on a discharged debt constitute a violation of the discharge injunction.

RESPONSE: Defendant denies the allegations of Paragraph 49 and further denies any and all allegations of wrongdoing.

50. Citi's attempts to solicit Plaintiff for a loan modification, deed-in-lieu of foreclosure, or short-sale in order to expedite transfer of possession of the subject property or induce the Plaintiff to continue to make monthly payments also constitute violations of the discharge injunction as they were designed to instill fear into Plaintiff, hoping she would make payment on a discharged debt or transfer the subject property to Citi so Citi can avoid the time and expense associated with the legal process of foreclosing on the subject property.

RESPONSE: Defendant denies the allegations of Paragraph 50 and further denies any and all allegations of wrongdoing.

51. Moreover, Citi willfully violated the discharge injunction by placing 101 collection calls to Plaintiff's cellular phone in an attempt to collect the discharged debt.

RESPONSE: Defendant denies the allegations of Paragraph 51 and further denies any and all allegations of wrongdoing.

b. Citi's conduct was perpetual, willful, and wanton

52. Citi had knowledge of the Order of Discharge and discharge injunction through notices from the BNC, the public record, and from the Plaintiff directly. *See* Exhibits A through D.

RESPONSE: Defendant denies the allegations of Paragraph 52 and further denies any and all allegations of wrongdoing.

53. Despite having actual knowledge of the Order of Discharge, Citi committed multiple egregious violations of the discharge injunction by failing to cease collection efforts as evidenced by the constant calls and dunning letters.

RESPONSE: Defendant denies the allegations of Paragraph 53 and further denies any and all allegations of wrongdoing.

54. Based on the broad language of the Bankruptcy Code, Citi willfully and perpetually sought to collect a debt from the Plaintiff in violation of the discharge injunction, thus warranting sanctions and punitive damages to deter future conduct of a similar nature.

RESPONSE: Defendant denies the allegations of Paragraph 54 and further denies any and all allegations of wrongdoing.

55. The Plaintiff is entitled to actual damages, attorney's fees, and costs for Citi's willful violations of the discharge injunction. The Plaintiff is also entitled to punitive damages for Citi's

arrogant defiance of the Bankruptcy Code and its provisions. The Court should award punitive damages to deter Citit from future misconduct.

RESPONSE: Defendant denies the allegations of Paragraph 55, denies that Plaintiff is entitled to any damages, fees or costs, and further denies any and all allegations of wrongdoing.

COUNT III — VIOLATION OF THE ILLINOIS CONSUMER FRAUD ACT

56. Plaintiff restates and reallages paragraphs 1 through 34 as through fully set forth herein.

RESPONSE: Defendant incorporates its responses to Paragraphs 1 through 34 of Plaintiff's Complaint as if fully stated herein.

57. Plaintiff is a "person" and a "consumer" as defined in ICFA, 815 ILCS 505/ (c) and (e) respectively.

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant denies Paragraph 57.

a. Unfairness

58. Citi is engaged in commerce in the State of Illinois with regard to Plaintiff, the subject loan, and the subject property. Citi specializes in lending, servicing, and debt collection, which are activities within the stream of commerce and utilized in their regular course of business.

RESPONSE: This paragraph states a purported legal conclusion, to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 58 and further denies any and all allegations of wrongdoing.

59. Citi's demands for payment on the subject debt, which was duly scheduled in Plaintiff's bankruptcy and subsequently discharged, represents the use of false pretenses and misleading communication to attempt to collect a debt that was not owed at the time the demands for payment were made.

RESPONSE: Defendant denies the allegations of Paragraph 59 and further denies any and all allegations of wrongdoing.

60. It was unfair for Citi to seek to collect the subject debt from the Plaintiff through constant misleading letters, statements, acceleration notices, and continuous phone calls to her cellular phone.

RESPONSE: Defendant denies the allegations of Paragraph 60 and further denies any and all allegations of wrongdoing.

61. It was unfair for Citi to attempt to induce the Plaintiff into making payments on a uncollectible debt by repeatedly sending dunning letters and placing harassing collection calls to the Plaintiff's cellular phone.

RESPONSE: Defendant denies the allegations of Paragraph 61 and further denies any and all allegations of wrongdoing.

62. It was unfair for Citi to contact the Plaintiff directly knowing that she was represented by an attorney.

RESPONSE: Defendant denies the allegations of Paragraph 62, denies the implication that Citi ever contacted Plaintiff while she was represented by counsel, and further denies any and all allegations of wrongdoing.

63. Citi intended that the Plaintiff rely on its unfair acts and the Plaintiff did in fact rely on the unfair acts to her detriment as she was led to believe that her bankruptcy had no legal effect.

RESPONSE: Defendant denies the allegations of Paragraph 63 and further denies any and all allegations of wrongdoing.

64. Citi bullied the Plaintiff into near submission with perpetual unfair and deceptive conduct through lies, harassment, and deception regarding the collectability of the subject debt, and by ignoring her requests for the communications to stop or be directed to her attorneys.

RESPONSE: Defendant denies the allegations of Paragraph 64 and further denies any and all allegations of wrongdoing.

65. As pled in paragraphs 33-34, Plaintiff was harmed by Citi's conduct.

RESPONSE: Defendant incorporates its responses to Paragraphs 33-34 as though fully set forth herein, denies the allegations of Paragraph 65, and further denies any and all allegations of wrongdoing.

66. An award of punitive damages is appropriate because Citi's conduct described above was outrageous, willful and wanton, showed a reckless disregard for the rights of the Plaintiff and consumers, generally, and the Plaintiff had no choice but to submit to the continued letters

and phone calls.

RESPONSE: Defendant denies the allegations of Paragraph 66, denies that Plaintiff is entitled to punitive damages, and further denies any and all allegations of wrongdoing.

JURY DEMAND

Defendant admits that Plaintiff requested a trial by jury pursuant to Fed. R. Civ. P. 38(b) on all claims so triable but reserves its right to object at an appropriate time.

DEFENDANT'S AFFIRMATIVE DEFENSES AND/OR ADDITIONAL DEFENSES

Without assuming any burden of proof that it would not otherwise bear, Defendant also asserts the following additional or affirmative defenses to all claims against it.

First Defense: Failure to State a Claim

Defendant states that Plaintiff's Complaint fails to state any claim upon which relief may be granted.

Second Defense: Compliance with Applicable Statutes and Regulations

Defendant states that it complied with all applicable statutes and regulations, thereby barring all of Plaintiff's claims.

Third Defense: Standing

Plaintiff lacks standing to seek the relief requested in the Complaint and/or lacks standing to bring some or all of the claims alleged in this litigation.

Fourth Defense: Consent and/or Waiver

Plaintiff's claims under the TCPA are barred, in whole or in part, by principles of consent and/or waiver, including but not limited to prior express consent to receive telephone calls on his cellular telephone.

Fifth Defense: Estoppel

Plaintiff's claims are barred, in whole or in part, by principles of estoppel.

Sixth Defense: Others Responsible

Plaintiff is barred from obtaining any of the relief demanded in the Complaint because his alleged losses and damages, if any, were proximately and exclusively caused by his own actions or omissions, or by the actions or omissions of third parties.

Seventh Defense: Due Process

The damages sought are excessive and in violation of the Due Process clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

Eighth Defense: First Amendment

The claims asserted under the TCPA constitute an undue burden on speech and thus violate the First Amendment of the United States Constitution.

Ninth Defense: Primary Jurisdiction

The claims asserted under the TCPA are subject to the primary jurisdiction of the Federal Communications Commission ("FCC") and should be stayed and/or dismissed pending resolution by the FCC.

Tenth Defense: Exemptions to TCPA Liability

Plaintiff's claims under the TCPA are barred, in whole or in part, on the grounds and to the extent that any alleged telephone calls purportedly providing the basis for Plaintiff's TCPA claim fall within the any exemptions for TCPA liability recognized by the FCC.

RESERVATION OF RIGHTS

Defendant states that, following the completion of discovery and investigation into this matter, additional defenses may become available. Defendant reserves the right to assert additional defenses that may be discovered in the course of these proceedings.

RELIEF REQUESTED

Defendant respectfully requests that the Court enter judgment in its favor, including the following:

1. Denying all relief sought by Plaintiff in her Complaint and dismissing Plaintiff's Complaint in its entirety with prejudice;

2. Awarding Defendant its costs, expenses, and fees incurred in defending this

lawsuit, to the extent permissible; and

3. Awarding Defendant any other relief this Court deems just and proper.

DATED: September 24, 2015

Respectfully submitted,

CITIFINANCIAL SERVICING, LLC[2]

s/ Michael Bornhorst
Debra Bogo-Ernst
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[2] The Complaint improperly names CitiFinancial, Inc. as a defendant.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September, 2015, I caused the foregoing to be served on the Parties of Record via the Court's CM/ECF service:

s/ Michael Bornhorst
Michael Bornhorst